
(2015) 04 AHC CK 0251
In the Allahabad High Court
Case No : S.C.C. Revision No. 625 of 2014

State Bank of India	Vs	APPELLANT
Sarla Agarwal and Others		RESPONDENT

Date of Decision : 27-04-2015

Acts Referred:

Transfer of Property Act, 1882 — Section 106

Citation : (2015) 111 ALR 907 : (2015) 129 RD 152

Hon'ble Judges : Rajesh Dayal Khare, J

Bench : Single Bench

Advocate : Satish Chaturvedi, for the Appellant; Arpit Agarwal and K.M. Garg, Advocates for the Respondent

Judgement

Rajesh Dayal Khare, J—Heard Sri Satish Chaturvedi, learned Counsel for the revisionist and Sri K.M. Garg, learned Counsel for the respondents.

Present revision has been preferred against the judgment and order dated 30.10.2014 passed by the Additional District Judge/Special Judge, E.C. Act, Pilibhit in S.C.C. No. 13 of 2010.

The case of the revisionist is that the revisionist, which is the Bank entered into a lease deed with the respondents, copy of which has been filed as Annexure-1 to the affidavit, which was initially for a period of five years with the condition that after expiry of the initial term, the same was extendable for two further period of five year term each on the same terms and conditions subject to enhancement of 25% rent at the time of each renewal, provided due notice thereof is given three months prior to expiry of said term to the lessor or left at his last known address and reference in this regard has been drawn to Clause 2 of the said lease deed.

2. Learned Counsel for the revisionist has drawn attention of this Court to the endorsement made by the Sub Registrar in the lease deed, whereby he endorsed that the stamp was purchased for such amount which was valid for a period of 15 years, as mentioned in the lease deed, at page 61 of the present paper book. It

is contended that the stamp duty was paid for 15 years and half of which was paid by the respondents also, which clearly intended that the lease deed was for a period of 15 years and only action to be taken by the Bank, by way of publication with intimation to the landlord to extend the tenancy for further period of 15 years and to pay enhanced rent, which has been complied by the revisionist. The continuance of the revisionist in the leased premises after a period of five years without any protest by the respondents, was prima facie proof of extension of lease for another period of five years, therefore, as lease deed was in existence even after 30.4.2006, notice, which was sent under section 106 of T.P. Act was misconceived. Initially period of five years was to commence from 1.5.2001 and was to expire on 30.4.2006 and after expiry of first term of five years, the revisionist continued to remain in possession in the premises as tenant till date. As the respondents did not give any notice to the revisionist and the period continued even after 30.4.2006 and on 13.8.2010, registered notice was sent by the respondents stating that the respondents did not want to continue the tenancy of revisionist and tenancy of the revisionist shall come to an end after 30 days from the date of service of notice and demanded possession of the premises alongwith rent and damages, which notice was misconceived besides being illegal. The case of the respondents in the suit was that when the revisionist did not vacate the premises and failed to comply with the contents of the notice dated 13.8.2010, the revisionist was liable to be evicted from the premises and liable to pay rent @ Rs. 24,825/- per month and also the compensation for illegal occupation of premises after termination of tenancy @ Rs. 3,783/- per day, which is highly exorbitant. Ultimately suit filed by the respondents was decreed vide order impugned.

3. Learned Counsel for the revisionist has submitted that according to clause 24 of the lease deed, the term of lease was to be renewed or extended/continued even for two terms of five years each. The order impugned has only been passed on the ground that as no subsequent lease deed has been registered, therefore, order of eviction be passed and further the damages, as awarded, is very exorbitant, therefore, impugned order cannot be sustained in the eye of law. It is further submitted that after expiry of the initial term, another period of five years will be deemed to have been extended, for which no registered document or renewal of deed was required to be executed as it would at best be a case of handing over or extension of lease deed. Thus, it is argued that the order impugned cannot be sustained in the eye of law and is liable to be quashed.

4. Sri K.M. Garg, learned Counsel for the respondents has contended that the lease deed was executed between the parties on 30.7.2011, which was effective from 1.5.2001 for a term of five years with an option of renewing the same for two further period of five years each on same terms and conditions with escalation of rent by 25% for each renewal subject to giving due notice of three months in writing prior to expiry of term to the lessor or on his last known address. It is further contended that the Apex Court has held and even after expiry of period of lease, mere acceptance of rent of subsequent months, in

which lessee continues to occupy the leased premises, cannot be said to be a conduct signifying assent to the continuance of the lease even after expiry of the lease period and he has relied upon the judgment in Shanti Prasad Devi and Another Vs. Shankar Mahto and Others, AIR 2005 SC 2905 : (2005) 3 CTC 550 : (2005) 6 JT 6 : (2005) 5 SCC 543 : (2005) 1 SCR 418 Supp : (2005) 2 UJ 902 in support of his contention. It is next contended that the stamp paper for execution of lease deed was purchased for a period of 15 years as noted by the Sub Registrar will not affect the contents of the term of lease deed as entered into between the parties. The carpet area of the building is 3783 Sq Feet and initially rate of rent was Rs. 5.25 per Sq. Feet. It is further contended that for fixed term tenancy, which came to end on 30.4.2006 and as the tenant did not give any three months prior notice, as required under the terms of lease deed, which was duly signed and registered between the parties, hence, a notice dated 13.8.2010 was given to the revisionist terminating the tenancy and further demand of Rs. 1/- per Sq. Feet. per day as damages for illegal occupation after termination of tenancy till vacant possession is delivered to the respondents. It was further averred in the notice that if the rent is deposited by the revisionist, after termination of tenancy, in the bank account of the respondents, it shall not be treated to be accepted as rent. It is also contended that when the revisionist did not vacate the building, the respondents filed SCC Suit No. 13 of 2010 before the Judge Small Causes Court/District Judge, Pilibhit, which has been decreed.

5. It is next contended by Sri K.M. Garg, learned Counsel for the respondents that arguments, as advanced by the learned Counsel for the revisionist, are against their own pleadings inasmuch as in the plaint, it was specifically averred that tenancy was for a fixed period of five years and no renewal of the same was done after expiry of said period after giving three months prior notice, which has not been denied by the revisionist in their written statement, therefore, it cannot be argued that it is a case of extension and not renewal. It is also contended that the revisionist cannot go beyond their own pleadings, thus, the aforesaid argument advanced by the learned Counsel for the revisionist is not sustainable and learned-Counsel for the respondents has relied upon the judgment of the Apex Court in the matter of Bharat Petroleum Corporation Limited Vs. Rama Chandrashekhar Vaidya and Another, (2013) 4 ABR 837 : (2013) 5 AD 116 : (2013) 2 CTC 881 : (2013) 8 JT 301 : (2013) 3 RCR(Civil) 336 : (2013) 2 RCR(Rent) 29 : (2013) 5 SCALE 234 : (2013) 5 SCALE 229 : (2014) 1 SCC 657 , and also the judgment in Bondar Singh and Others Vs. Nihal Singh and Others, AIR 2003 SC 1905 : (2003) 2 CTC 635 : (2003) 2 SCALE 589 : (2003) 4 SCC 161 : (2003) 2 SCR 564 : (2003) AIRSCW 1383 : (2003) 2 Supreme 512 in support of their contention. Learned Counsel for the respondents has further relied upon decision of Apex Court in 2012 (13) SC page 80 and has argued that rule of construction of a document is the intention of the executants, which must be found in the words used in the document. The question is not what may be supposed to have been intended, but what has been put down in black and white. It is further contended that as no prior notice of three months was given

by the Bank for renewal of lease deed to the respondents, there is no renewal of lease deed, which has rightly been held by the Court below, thus, there is no infirmity in the order impugned, which may call for any interference by this Court. It is next contended that the provisions of Rent Control Act will not be attracted, therefore, damages can be enhanced and can be made equivalent to the existing market rate of the area. It is next contended that in case the tenancy is a fixed term tenancy, no notice is required as has been held in the case of Giriraj Prasad Vs. Shyam Sunder Agrawal, (2011) 4 AWC 3671 . It is also contended that the amount awarded is just and legal and calls for no interference by this Court in exercise of power under its revisional jurisdiction.

6. After hearing the learned Counsel for the parties and after perusing the materials on record, this Court is of the opinion that learned Counsel for the revisionist could not make out any good ground, which may call for any interference by this Court in exercise of power conferred under revisional jurisdiction for quashing the order 30.10.2014 passed by the Additional District/ Special Judge (E.C. Act), Pilibhit in SCC No. 13 of 2010.

7. Accordingly, the present revision lacks merit and is dismissed.

8. After passing the order, Sri Satish Chaturvedi, learned Counsel for the revisionist has stated that the revisionist is the Bank and prays that some reasonable time may be given for vacating the premises.

9. Accordingly, eight months time, from today is granted to the revisionist for vacating the premises in question subject to payment of the decretal amount within the aforesaid period and also damages as computed by the Court below to be deposited by 7th of each calendar month till handing over the actual possession to the respondents-landlords and also the revisionist shall give an undertaking on oath before the Court below within fifteen days from today with regard to vacation of the premises in question within the time granted above.

10. The amount so deposited by the revisionist may be permitted to be withdrawn by the respondents-landlords/after due verification by the Courts below. In case of default of conditions mentioned-above, this protection granted to the revisionist shall automatically stand vacated and it will be open to the Court concerned to execute the order impugned forthwith.